

## SUBCHAPTER A—CHILD NUTRITION PROGRAMS

### PART 210—NATIONAL SCHOOL LUNCH PROGRAM

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AUTHORITY: 42 U.S.C. 1751–1760, 1779.

SOURCE: 53 FR 29147, Aug. 2, 1988, unless otherwise noted.

#### Subpart A—General

##### § 210.1 General purpose and scope.

(a) *Purpose of the program.* Section 2 of the National School Lunch Act (42 U.S.C. 1751), states: “It is declared to be the policy of Congress, as a measure of national security, to safeguard the health and well-being of the Nation’s children and to encourage the domestic consumption of nutritious agricultural commodities and other food, by assisting the States, through grants-in-aid and other means, in providing an adequate supply of food and other facilities for the establishment, maintenance, operation, and expansion of non-profit school lunch programs.” Pursuant to this act, the Department provides States with general and special cash assistance and donations of foods acquired by the Department to be used to assist schools in serving nutritious lunches to children each school day. In furtherance of Program objectives, participating schools shall serve lunches that are nutritionally adequate, as set forth in these regulations, and shall to the extent practicable, ensure that participating children gain a full understanding of the relationship between proper eating and good health.

(b) *Scope of the regulations.* This part sets forth the requirements for participation in the National School Lunch and Commodity School Programs. It specifies Program responsibilities of State and local officials in the areas of program administration, preparation and service of nutritious lunches, payment of funds, use of program funds, program monitoring, and reporting and recordkeeping requirements.

##### § 210.2 Definitions.

For the purpose of this part:

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*Act* means the National School Lunch Act, as amended.

*Afterschool care program* means a program providing organized child care services to enrolled school-age children afterschool hours for the purpose of care and supervision of children. Those programs shall be distinct from any extracurricular programs organized primarily for scholastic, cultural or athletic purposes.

*Attendance factor* means a percentage developed no less than once each school year which accounts for the difference between enrollment and attendance. The attendance factor may be developed by the school food authority, subject to State agency approval, or may be developed by the State agency. In the absence of a local or State attendance factor, the school food authority shall use an attendance factor developed by FNS. When taking the attendance factor into consideration, school food authorities shall assume that all children eligible for free and reduced price lunches attend school at the same rate as the general school population.

*Average Daily Participation* means the average number of children, by eligibility category, participating in the Program each operating day. These numbers are obtained by dividing (a) the total number of free lunches claimed during a reporting period by the number of operating days in the same period; (b) the total number of reduced price lunches claimed during a reporting period by the number of operating days in the same period; and (c) the total number of paid lunches claimed during a reporting period by the number of operating days in the same period.

*Child* means—(a) a student of high school grade or under as determined by the State educational agency, who is enrolled in an educational unit of high school grade or under as described in paragraphs (a) and (b) of the definition of “School,” including students who are mentally or physically disabled as defined by the State and who are participating in a school program established for the mentally or physically disabled; or (b) a person under 21 chronological years of age who is enrolled in an institution or center as described in paragraphs (c) and (d) of the definition

of “School;” or (c) For purposes of reimbursement for meal supplements served in afterschool care programs, an individual enrolled in an afterschool care program operated by an eligible school who is 12 years of age or under, or in the case of children of migrant workers and children with disabilities, not more than 15 years of age.

*CND* means the Child Nutrition Division of the Food and Nutrition Service of the Department.

*Commodity School Program* means the Program under which participating schools operate a nonprofit lunch program in accordance with this part and receive donated food assistance in lieu of general cash assistance. Schools participating in the Commodity School Program shall also receive special cash and donated food assistance in accordance with §210.4(c).

*Days* means calendar days unless otherwise specified.

*Department* means the United States Department of Agriculture.

*Distributing agency* means a State agency which enters into an agreement with the Department for the distribution to schools of donated foods pursuant to part 250 of this chapter.

*Donated foods* means food commodities donated by the Department for use in nonprofit lunch programs.

*Fiscal year* means a period of 12 calendar months beginning October 1 of any year and ending with September 30 of the following year.

*FNS* means the Food and Nutrition Service, United States Department of Agriculture.

*FNSRO* means the appropriate Regional Office of the Food and Nutrition Service of the Department.

*Food component* means one of the four food groups which comprise reimbursable meals planned under a food-based menu planning approach. The four food components are: meat/meat alternate; grains/breads; fruits/vegetables; and milk.

*Food item* means one of the five foods offered in lunches under a food-based menu planning approach: meat/meat alternate; grains/breads; two servings of fruits/vegetables; and milk.

*Food service management company* means a commercial enterprise or a nonprofit organization which is or may

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be contracted with by the school food authority to manage any aspect of the school food service.

*Free lunch* means a lunch served under the Program to a child from a household eligible for such benefits under 7 CFR part 245 and for which neither the child nor any member of the household pays or is required to work.

*Lunch* means a meal service that meets the applicable nutrition standards and portion sizes in §210.10 for lunches.

*Menu item* means, under Nutrient Standard Menu Planning or Assisted Nutrient Standard Menu Planning, any single food or combination of foods. All menu items or foods offered as part of the reimbursable meal may be considered as contributing towards meeting the nutrition standards provided in §210.10, except for those foods that are considered as foods of minimal nutritional value as provided for in §210.11(a)(2) which are not offered as part of a menu item in a reimbursable meal. For the purposes of a reimbursable lunch, a minimum of three menu items must be offered, one of which must be an entree (a combination of foods or a single food item that is offered as the main course) and one of which must be fluid milk. Under offer versus serve, a student shall select, at a minimum, an entree and one other menu item. If more than three menu items are offered, the student may decline up to two menu items; however, the entree cannot be declined.

*National School Lunch Program* means the Program under which participating schools operate a nonprofit lunch program in accordance with this part. General and special cash assistance and donated food assistance are made available to schools in accordance with this part.

*Net cash resources* means all monies, as determined in accordance with the State agency's established accounting system, that are available to or have accrued to a school food authority's nonprofit school food service at any given time, less cash payable. Such monies may include, but are not limited to, cash on hand, cash receivable, earnings on investments, cash on deposit and the value of stocks, bonds or other negotiable securities.

*Nonprofit*, when applied to schools or institutions eligible for the Program, means exempt from income tax under section 501(c)(3) of the Internal Revenue Code of 1954, as amended; or, in the Commonwealth of Puerto Rico, certified as nonprofit by the Governor.

*Nonprofit school food service* means all food service operations conducted by the school food authority principally for the benefit of schoolchildren, all of the revenue from which is used solely for the operation or improvement of such food services.

*Nutrient Standard Menu Planning/Assisted Nutrient Standard Menu Planning* means ways to develop lunch menus based on the analysis for nutrients in the menu items and foods offered over a school week to determine if specific levels for a set of key nutrients and calories were met in accordance with §210.10(i)(5). However, for the purposes of Assisted Nutrient Standard Menu Planning, lunch menu planning and analysis are completed by other entities and must incorporate the production quantities needed to accommodate the specific service requirements of a particular school or school food authority in accordance with §210.10(j).

*OIG* means the Office of the Inspector General of the Department.

*Point of Service* means that point in the food service operation where a determination can accurately be made that a reimbursable free, reduced price or paid lunch has been served to an eligible child.

*Program* means the National School Lunch Program and the Commodity School Program.

*Reduced price lunch* means a lunch served under the Program: (a) to a child from a household eligible for such benefits under 7 CFR part 245; (b) for which the price is less than the school food authority designated full price of the lunch and which does not exceed the maximum allowable reduced price specified under 7 CFR part 245; and (c) for which neither the child nor any member of the household is required to work.

*Reimbursement* means Federal cash assistance including advances paid or payable to participating schools for lunches meeting the requirements of §210.10 and served to eligible children.

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*Revenue*, when applied to nonprofit school food service, means all monies received by or accruing to the nonprofit school food service in accordance with the State agency's established accounting system including, but not limited to, children's payments, earnings on investments, other local revenues, State revenues, and Federal cash reimbursements.

*School* means: (a) An educational unit of high school grade or under, recognized as part of the educational system in the State and operating under public or nonprofit private ownership in a single building or complex of buildings; (b) any public or nonprofit private classes of preprimary grade when they are conducted in the aforementioned schools; or (c) any public or nonprofit private residential child care institution, or distinct part of such institution, which operates principally for the care of children, and, if private, is licensed to provide residential child care services under the appropriate licensing code by the State or a subordinate level of government, *except for* residential summer camps which participate in the Summer Food Service Program for Children, Job Corps centers funded by the Department of Labor, and private foster homes. The term "residential child care institutions" includes, but is not limited to: homes for the mentally, emotionally or physically impaired, and unmarried mothers and their infants; group homes; halfway houses; orphanages; temporary shelters for abused children and for runaway children; long-term care facilities for chronically ill children; and juvenile detention centers. A long-term care facility is a hospital, skilled nursing facility, intermediate care facility, or distinct part thereof, which is intended for the care of children confined for 30 days or more.

*School food authority* means the governing body which is responsible for the administration of one or more schools; and has the legal authority to operate the Program therein *or* be otherwise approved by FNS to operate the Program.

*School week* means the period of time used to determine compliance with the nutrition standards and the appropriate calorie and nutrient levels in

§210.10. Further, if applicable, school week is the basis for conducting Nutrient Standard Menu Planning or Assisted Nutrient Standard Menu Planning for lunches as provided in §210.10(i) and §210.10(j). The period shall be a normal school week of five consecutive days; however, to accommodate shortened weeks resulting from holidays and other scheduling needs, the period shall be a minimum of three consecutive days and a maximum of seven consecutive days. Weeks in which school lunches are offered less than three times shall be combined with either the previous or the coming week.

*School year* means a period of 12 calendar months beginning July 1 of any year and ending June 30 of the following year.

*Secretary* means the Secretary of Agriculture.

*7 CFR part 3015* means the Uniform Federal Assistance Regulations published by the Department to implement OMB Circulars A-21, A-87, A-102, A-110, and A-122; and Executive Order 12372. (For availability of OMB Circulars referenced in this definition, see 5 CFR 1310.3.)

*7 CFR part 3017* means the Department's regulation to implement Executive Order 12549, covering government-wide rules on suspension and debarment as well as The Drug Free Workplace Act of 1988.

*7 CFR part 3018* means the Department's Common Rule regarding Governmentwide New Restrictions on Lobbying. Part 3018 implements the requirements established by section 319 of the 1990 Appropriations Act for the Department of Interior and Related Agencies (Pub. L. 101-121).

*7 CFR part 3052* means the Department's regulations implementing OMB Circular A-133, "Audits of State, Local Governments, and Non-Profit Organizations." (For availability of OMB Circulars referenced in this definition, see 5 CFR 1310.3.)

*State* means any of the 50 States, District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and, as applicable, American Samoa and the Commonwealth of the Northern Marianas.

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*State agency* means (a) the State educational agency; (b) any other agency of the State which has been designated by the Governor or other appropriate executive or legislative authority of the State and approved by the Department to administer the Program in schools, as specified in §210.3(b); or (c) the FNSRO, where the FNSRO administers the Program as specified in §210.3(c).

*State educational agency* means, as the State legislature may determine, (a) the chief State school officer (such as the State Superintendent of Public Instruction, Commissioner of Education, or similar officer), or (b) a board of education controlling the State department of education.

*Student with disabilities* means any child who has a physical or mental impairment as defined in §15b.3 of the Department's nondiscrimination regulations (7 CFR part 15b).

*Subsidized lunch* (paid lunch) means a lunch served to children who are either not eligible for or elect not to receive the free or reduced price benefits offered under 7 CFR part 245. The Department subsidizes each paid lunch with both general cash assistance and donated foods. Although a paid lunch student pays for a large portion of his or her lunch, the Department's subsidy accounts for a significant portion of the cost of that lunch.

*Yogurt* means commercially prepared coagulated milk products obtained by the fermentation of specific bacteria, that meet milk fat or milk solid requirements and to which flavoring foods or ingredients may be added. These products are covered by the Food and Drug Administration's Definition and Standard of Identity for yogurt, lowfat yogurt, and nonfat yogurt, 21 CFR 131.200, 21 CFR 131.203, and 21 CFR 131.206, respectively.

[53 FR 29147, Aug. 2, 1988, as amended at 54 FR 12580, Mar. 28, 1989; 56 FR 32939, July 17, 1991; 58 FR 42487, Aug. 10, 1993; 60 FR 31207, June 13, 1995; 62 FR 10189, Mar. 6, 1997; 64 FR 50740, Sept. 20, 1999; 65 FR 26912, May 9, 2000]

### §210.3 Administration.

(a) *FNS*. FNS will act on behalf of the Department in the administration of the Program. Within FNS, the CND

will be responsible for Program administration.

(b) *States*. Within the States, the responsibility for the administration of the Program in schools, as defined in §210.2, shall be in the State educational agency. If the State educational agency is unable to administer the Program in public or private nonprofit residential child care institutions or nonprofit private schools, then Program administration for such schools may be assumed by FNSRO as provided in paragraph (c) of this section, or such other agency of the State as has been designated by the Governor or other appropriate executive or legislative authority of the State and approved by the Department to administer such schools. Each State agency desiring to administer the Program shall enter into a written agreement with the Department for the administration of the Program in accordance with the applicable requirements of this part; part 235; part 245; parts 15, 15a, 15b, and 3015 of Departmental regulations; and FNS instructions.

(c) *FNSRO*. The FNSRO will administer the Program in nonprofit private schools or public or nonprofit private residential child care institutions if the State agency is prohibited by law from disbursing Federal funds paid to such schools. In addition, the FNSRO will continue to administer the Program in those States in which nonprofit private schools or public or nonprofit private residential child care institutions have been under continuous FNS administration since October 1, 1980, unless the administration of the Program in such schools is assumed by the State. The FNSRO will, in each State in which it administers the Program, assume all responsibilities of a State agency as set forth in this part and part 245 of this chapter as appropriate. References in this part to "State agency" include FNSRO, as applicable, when it is the agency administering the Program.

(d) *School food authorities*. The school food authority shall be responsible for the administration of the Program in schools. State agencies shall ensure that school food authorities administer the Program in accordance with the applicable requirements of this part;